

ORDINANCE NO. O2017.18

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 29, ARTICLE II, TEMPE CITY CODE,
RELATING TO ENCROACHMENTS AND
OTHER ACTIVITIES IN PUBLIC RIGHTS-OF-
WAY, BY AMENDING SECTIONS 29-16
RELATING TO DEFINITIONS, 29-18 RELATING
TO ADMINISTRATION; ENFORCEMENT, 29-19
RELATING TO GENERAL REGULATIONS,
AND BY ADDING A NEW SECTION 29-26
RELATING TO TEMPORARY SERVICE LINES.**

Whereas, installing temporary service lines is a practice used by communications companies to re-establish service or provide timely service while awaiting approval of permits from the city that are needed to install a permanent authorized underground service line; and

Whereas, such temporary service lines need to be safely placed and removed as expeditiously as possible so as not to be a safety hazard to the public; and

Whereas, Chapter 29, Article II, Section 29-21 of the Tempe City Code prohibits a person from obstructing or placing an obstruction upon, across or along any street, alley or public right-of-way so as to hinder the free and proper use thereof; and

Whereas, Section 29-21 authorizes the City Engineer to only allow temporary obstructions in a street, alley or public right-of-way under certain conditions and only for the time needed to accomplish their purpose; and

Whereas, the City historically and currently receives complaints from the public regarding temporary service lines that have not been reported to the City Engineer when placed in the City and also regarding those temporary service lines that have not been timely removed; and

Whereas, the existence of such temporary lines that have not been timely removed cause the City to expend resources to locate and track the public's complaints about such service lines that pose a nuisance and safety hazard to the public; and

Whereas, failure by a communications company to timely acknowledge ownership of an unauthorized temporary service line requires the City to investigate and expend resources to determine such ownership; and

Whereas, additional regulations are required to address such threats to the health, safety and welfare of the public caused by temporary service lines that are not authorized by the City engineer;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 29, Article II, Section 29-16 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-16. Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section, unless the context clearly indicates a different meaning:

Alley and *alleyways* means lanes or passageways for use as a means of access to the rear of lots or buildings. Alleys and alleyways are not in any way to be considered thoroughfares.

COMMUNICATIONS COMPANY MEANS A COMPANY THAT INSTALLS ABOVE-GROUND NO-VOLTAGE AND LOW-VOLTAGE CABLING FOR ANY OR ALL OF THE FOLLOWING TYPES OF SERVICES: TELEPHONE, TELECOMMUNICATIONS, DATA, CABLE OR OTHER VIDEO.

Public rights-of-way means that property used as public thoroughfares and lying between the exterior boundary lines of any area granted to or received by the city by grant, gift, easement, deed, dedication or operation of the law for street, alley, walk or utility purposes.

Sidewalk means that portion of a street between the curb lines or the lateral lines of a roadway and the adjacent lines, intended for use of pedestrians.

Street means the ~~entire~~ FULL width OF THE RIGHT-OF-WAY OF ANY ROAD, STREET, HIGHWAY, ALLEY, LAND OR PEDESTRIAN WALKWAY USED BY OR FOR THE GENERAL PUBLIC, WHETHER OR NOT SUCH ROAD, STREET, HIGHWAY, ALLEY, LAND OR PEDESTRIAN RIGHT-OF-WAY HAS BEEN IMPROVED OR ACCEPTED FOR MAINTENANCE BY THE CITY. ~~between the boundary lines of every way, when any part thereof is open to the use of the public for purposes of vehicular travel.~~

TEMPORARY SERVICE LINE MEANS AN ABOVE-GROUND NO-VOLTAGE OR LOW-VOLTAGE CABLING INSTALLED BY A COMMUNICATIONS COMPANY ON THE GROUND SURFACE OR ATTACHED TO AN EXISTING POLE IN THE PUBLIC RIGHTS-OF-WAY AS A TEMPORARY MEANS TO RESTORE OR INITIATE ANY OR ALL OF THE FOLLOWING TYPES OF SERVICES TO A RESIDENT OR BUSINESS: TELEPHONE, TELECOMMUNICATIONS, DATA, CABLE OR OTHER VIDEO SERVICE.

Vehicle means a conveyance which is self-propelled.

Section 2. That Chapter 29, Article II, Section 29-18 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-18. Administration; enforcement.

- (a) The public works director or his authorized agent is designated as administrator and enforcing officer of this article, unless otherwise specified.
- (b) Any person who commences or causes to be commenced any work in the public right-of-way for which a permit or license is required by this code without first having obtained a permit or license therefor, as applicable, shall pay, in addition to the permit or license fee for such work, an investigation fee. The amount of the permit or license fee and the amount of the investigation fee shall be as established by the city council by resolution (see Appendix A).
- (c) Any person who works in the public right-of-way with or without a permit or license shall defend, indemnify and hold harmless the city, its officials, officers, agents, volunteers and employees against any and all damages which may arise out of such work and shall comply with all requirements of the permit or license.
- (d) The city engineer may revoke any license or permit issued or may impose an investigation fee under the provisions of this article. The decision to revoke a permit or license or impose an investigation fee may be appealed directly to the city manager. Any such appeal shall be in the form of a written petition to the city manager and shall be filed with the city engineer not later than ten (10) days after the date the license or permit is revoked or investigation fee is imposed.
- (E) THE CITY ENGINEER MAY IMPOSE A PENALTY FEE ON A COMMUNICATIONS COMPANY FOR FAILURE TO APPLY FOR A UTILITY PERMIT WITHIN FIFTEEN (15) BUSINESS DAYS FROM EITHER THE DATE OF THE REPORT SUBMITTED BY A COMMUNICATIONS COMPANY REGARDING THE LOCATION OF A TEMPORARY SERVICE LINE (IN THE CASE OF A SELF-REPORT) OR THE DATE OF THE NOTIFICATION FROM THE CITY OF AN UNREPORTED TEMPORARY SERVICE LINE (IN THE CASE OF A DISCOVERY OF SUCH A TEMPORARY SERVICE LINE).
- (F) THE CITY ENGINEER SHALL IMPOSE A PENALTY FEE ON A COMMUNICATIONS COMPANY FOR FAILURE TO REMOVE A

TEMPORARY SERVICE LINE WITHIN THIRTY (30) BUSINESS DAYS AFTER THE CITY'S APPROVAL OF THE UTILITY PERMIT AUTHORIZING THE PLACEMENT OF PERMANENT FACILITIES WHICH WOULD REPLACE THE TEMPORARY SERVICE LINE.

- (G) THE CITY ENGINEER MAY IMPOSE A DISCOVERY FEE ON A COMMUNICATIONS COMPANY FOR FAILURE TO REPORT A TEMPORARY SERVICE LINE AS REQUIRED BY SECTION 29-26(A).
- (H) THE CITY ENGINEER SHALL IMPOSE AN INVESTIGATION FEE ON A COMMUNICATIONS COMPANY FOR FAILURE TO ACKNOWLEDGE OWNERSHIP OF A TEMPORARY SERVICE LINE WITHIN THE TIME PERIOD SPECIFIED BY SECTION 29-26(H) THAT RESULTS IN THE CITY CONDUCTING AN INVESTIGATION TO DETERMINE WHICH COMMUNICATIONS COMPANY OWNS THE TEMPORARY SERVICE LINE THAT IS A SUBJECT OF A COMPLAINT.

Section 3. That Chapter 29, Article II, Section 29-19 of the Tempe City Code is hereby amended to read as follows:

Sec. 29-19. General regulations.

- (a) No work of any nature shall be performed in a public right-of-way, except under a permit or license issued by the city engineer, unless otherwise allowed by this code or any other ordinance of the city. The city engineer shall provide the forms for and set forth the rules, regulations and procedures governing the issuance of permits and licenses.
- (b) An encroachment permit may be issued for encroachments of a temporary and removable nature, including but not limited to, awnings and commercial signs. A license shall be issued for encroachments of a more permanent nature, including but not limited to, buildings and underground parking facilities that impair the city's ability to use the right-of-way. The regulations and procedures established by the city engineer shall include procedures for evaluating which form is to be used.
- (c) The standard specifications and details of the city are made a part of this article and incorporated in this article by reference. All work performed in a public right-of-way shall be accomplished in accordance with these specifications and details.
- (d) All permittees and licensees shall give the city engineer twenty-four (24) hours' notice before commencing any work within a public right-of-way.
- (e) Permit and license fees shall be set by the city council by resolution. The city engineer with the concurrence of the city manager shall provide the city council with a list of the various classes of permits and licenses and the recommended charge for each class (see Appendix A).

- (f) A notice of completion shall be prepared by the city engineer and filed by the city clerk in the office of the county recorder on all work performed for the city by contract in a public right-of-way, the total contract price of which exceeds two thousand dollars (\$2,000).
- (G) PENALTY AND DISCOVERY FEES SHALL BE SET BY THE CITY COUNCIL BY RESOLUTION AND SUCH FEES SHALL BE INCLUDED ON APPENDIX A TO THE TEMPE CITY CODE.
- (H) THE CITY ENGINEER MAY EXTEND THE TIME PERIODS UNDER SUBSECTIONS 29-18(E) AND THOSE REFERENCED IN SECTION 29-26 FOR SPECIAL CIRCUMSTANCES INCLUDING, BUT NOT LIMITED TO, NETWORK UPGRADE ACTIVITIES OR DELAYS ATTRIBUTABLE TO UTILITY WORK OR OTHER THIRD-PARTY ACTIVITIES IN THE AREA OF THE TEMPORARY SERVICE LINE LOCATION AND CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF THE COMMUNICATIONS COMPANY (FORCE MAJEURE).

Section 4. That a new Section 29-26 is hereby added to Chapter 29, Article II of the Tempe City Code to read as follows:

Sec. 29-26. TEMPORARY SERVICE LINES

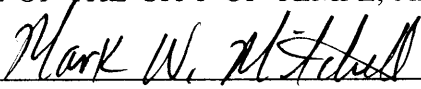
- (A) WITHIN TWO (2) BUSINESS DAYS OF THE PLACEMENT OF A TEMPORARY SERVICE LINE, A COMMUNICATIONS COMPANY SHALL SELF-REPORT THE INSTALLATION AND LOCATION OF THE TEMPORARY SERVICE LINE TO THE CITY ENGINEER AND THE COMMUNICATIONS COMPANY WILL THEN HAVE FIFTEEN (15) BUSINESS DAYS FROM THE DATE OF THE REPORT TO EITHER REMOVE THE TEMPORARY SERVICE LINE OR APPLY FOR A UTILITY PERMIT FOR CONSTRUCTION OF NEW FACILITIES THAT WILL RESULT IN THE REMOVAL OF THE TEMPORARY SERVICE LINE.
- (B) UPON DISCOVERY OF A TEMPORARY SERVICE LINE THAT WAS NOT SELF-REPORTED BY THE COMMUNICATIONS COMPANY THAT INSTALLED IT, THE CITY SHALL TAG THE SERVICE LINE WITH A CORRECTION NOTICE AND NOTIFY THE COMMUNICATIONS COMPANY. WITHIN FIFTEEN (15) BUSINESS DAYS OF SUCH NOTIFICATION, THE COMMUNICATIONS COMPANY MUST EITHER REMOVE THE TEMPORARY SERVICE LINE OR APPLY FOR A UTILITY PERMIT FOR CONSTRUCTION OF NEW FACILITIES THAT WILL RESULT IN REMOVAL OF THE TEMPORARY SERVICE LINE.
- (C) A COMMUNICATIONS COMPANY'S FAILURE TO SELF-REPORT TEMPORARY SERVICE LINES MAY SUBJECT SUCH COMMUNICATIONS COMPANY TO THE PENALTY AND DISCOVERY FEES AUTHORIZED BY SECTIONS 29-18(E), (F) AND (G).

- (D) THE DISCOVERY FEE MAY BE IMPOSED ON THE DAY OF THE DISCOVERY OF A TEMPORARY SERVICE LINE IF AND WHEN A COMMUNICATIONS COMPANY HAS ALREADY RECEIVED TEN (10) COMPLAINTS OF UNREPORTED SEPARATE TEMPORARY SERVICE LINE LOCATIONS WITHIN THE PRIOR TWELVE (12) MONTH PERIOD. ONCE A COMMUNICATIONS COMPANY'S COMPLAINTS DROP TO FEWER THAN TEN (10) IN A PRIOR TWELVE (12) MONTH PERIOD, THE DISCOVERY FEE WILL BE WAIVED UNTIL THE COMMUNICATIONS COMPANY RECEIVES ITS TENTH (10TH) COMPLAINT IN THE PRIOR TWELVE (12) MONTH PERIOD.
- (E) ON A TEMPORARY SERVICE LINE SELF-REPORTED BY A COMMUNICATIONS COMPANY, ANY PENALTY FEE STOPS ACCRUING ON THE DAY THE COMMUNICATIONS COMPANY REMOVES THE TEMPORARY SERVICE LINE. FOR A PENALTY FEE THAT WAS IMPOSED FOR FAILURE TO TIMELY APPLY FOR A UTILITY PERMIT, THE PENALTY FEE STOPS ACCRUING ON THE DAY THE COMMUNICATIONS COMPANY APPLIES FOR THE UTILITY PERMIT. HOWEVER, THE PENALTY FEE ASSESSMENT SHALL RESUME IF THE TEMPORARY SERVICE LINE IS NOT REMOVED WITHIN THIRTY (30) BUSINESS DAYS OF THE ISSUANCE OF THE PERMIT AND THE PENALTY FEE AMOUNT ASSESSED SHALL INCLUDE THE AMOUNT THAT WOULD HAVE OTHERWISE BEEN WAIVED FOR THAT THIRTY (30) BUSINESS DAY PERIOD ALLOWED FOR REMOVAL UNDER THIS SUBSECTION.
- (F) ON A TEMPORARY SERVICE LINE THAT WAS NOT SELF-REPORTED BY THE COMMUNICATIONS COMPANY, PENALTY FEE ASSESSMENTS SHALL CEASE TO ACCRUE ONCE THE APPLICATION FOR A PERMIT TO ESTABLISH THE SERVICE AND REMOVE THE TEMPORARY SERVICE LINE HAS BEEN SUBMITTED TO THE CITY ENGINEER BY THE COMMUNICATIONS COMPANY. HOWEVER, THE PENALTY FEE ASSESSMENT SHALL RESUME IF THE TEMPORARY SERVICE LINE HAS NOT BEEN REMOVED WITHIN THIRTY (30) BUSINESS DAYS OF THE ISSUANCE OF THE PERMIT, AND THE PENALTY FEE AMOUNT ASSESSED SHALL INCLUDE THE THIRTY (30) DAY PERIOD THAT WOULD HAVE OTHERWISE BEEN WAIVED FOR THAT THIRTY (30) DAY PERIOD UNDER THIS SUBSECTION.
- (G) IN THE CASE OF A TEMPORARY SERVICE LINE THAT HAS NOT BEEN SELF-REPORTED BY THE COMMUNICATIONS COMPANY THAT INSTALLED IT, THE CITY SHALL NOT IMPOSE A PENALTY OR DISCOVERY FEE WITHOUT FIRST DETERMINING THE OWNERSHIP OF THE TEMPORARY SERVICE LINE AND NOTIFYING THE COMMUNICATIONS COMPANY THAT OWNS SUCH SERVICE LINE.

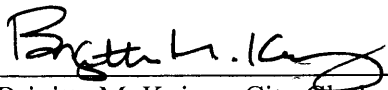
- (H) IF THE CITY ENGINEER IS UNABLE TO IMMEDIATELY DETERMINE THE OWNERSHIP OF A TEMPORARY SERVICE LINE THAT WAS NOT SELF-REPORTED, THE RELEVANT COMMUNICATIONS COMPANIES WILL BE NOTIFIED OF THE LOCATION OF THE TEMPORARY SERVICE LINE AND ASKED TO NOTIFY THE CITY OF EITHER THEIR OWNERSHIP OR NON-OWNERSHIP OF THE TEMPORARY SERVICE LINE WITHIN TEN (10) BUSINESS DAYS OF THE CITY ENGINEER'S NOTIFICATION. IF THE CITY DOES NOT RECEIVE AN ACKNOWLEDGMENT OF OWNERSHIP AND RESPONSIBILITY FOR THE TEMPORARY SERVICE LINE WITHIN THE TEN (10) BUSINESS DAYS, THE CITY WILL CONDUCT AN INVESTIGATION TO DETERMINE THE ACTUAL OWNER. UPON DETERMINING THE OWNERSHIP OF THE TEMPORARY SERVICE LINE, THE CITY SHALL NOTIFY THE COMMUNICATIONS COMPANY AND SHALL IMPOSE AN INVESTIGATION FEE AS AUTHORIZED BY SECTION 29-18(H).

Section 5. Pursuant to Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

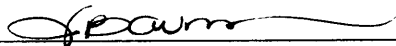
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 20th day of April, 2017.


Mark W. Mitchell, Mayor

ATTEST:


Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:


Judith R. Baumann, City Attorney